



CITY COUNCIL

AGENDA REQUEST

AGENDA OF:	05/06/08	AGENDA REQUEST NO:	IV A
INITIATED BY:	REGINA MORALES	RESPONSIBLE DEPARTMENT:	ECONOMIC DEVELOPMENT
PRESENTED BY:	REGINA MORALES	DEPARTMENT HEAD:	REGINA MORALES DIRECTOR OF ECONOMIC DEVELOPMENT <i>RM</i>
		ADDITIONAL DEPARTMENT HEAD (S):	
SUBJECT / PROCEEDING:	CONSIDERATION OF AND ACTION ON A HISTORIC DOCUMENTARY CONTRACT BETWEEN THE CITY OF SUGAR LAND AND IMAGE RESOURCES GROUP IN THE AMOUNT OF \$120,000 FUNDED EQUALLY FROM HOTEL OCCUPANCY TAX AND SUGAR LAND 4B CORPORATION BUDGET.		
EXHIBITS:	HISTORICAL DOCUMENTARY CONTRACT BETWEEN CITY OF SUGAR LAND AND IMAGE RESOURCES GROUP		
CLEARANCES		APPROVAL	
LEGAL:	JOE MORRIS, CITY ATTORNEY <i>LCD for JDM</i>	EXECUTIVE DIRECTOR:	JOE ESCH, BUSINESS & INTERGOVERNMENTAL RELATIONS <i>JE</i>
PURCHASING:	CHARLES EADS <i>CE</i> INTERIM PURCHASING MANAGER	ASST. CITY MANAGER:	N/A
BUDGET:	BRYAN GUINN, <i>BG</i> BUDGET MANAGER	CITY MANAGER:	ALLEN BOGARD <i>KB</i> /for AB
BUDGET			
EXPENDITURE REQUIRED: \$		120,000	
CURRENT BUDGET: \$		120,000	
ADDITIONAL FUNDING: \$		N/A	
RECOMMENDED ACTION			
Approve Historical Documentary Contract between the City of Sugar Land and Image Resources Group in the amount of \$120,000.			

EXECUTIVE SUMMARY

Historic Preservation is Goal Eleven of the City's Comprehensive Plan. It is further defined to preserve, protect, and enhance natural, historical, cultural and architectural features. One specific objective is to preserve the recorded history of the City and collect and preserve historical items. To further this initiative, the Sugar Land 4B Corporation approved \$60,000 toward a historical documentary project in the 2006/2007 Fiscal Year Budget. In addition, \$60,000 was budgeted in HOT revenues. This will fund a contract between the City of Sugar Land and Image Resources Group to provide a historic documentary for Sugar Land. Image Resources Group was identified as a sole vendor for this project due to their extensive library of historic video footage on Imperial Sugar and Sugar Land for which they hold the copyrights.

This historic documentary will capture and document both the history of Sugar Land and the stories of its people. The final product will be an approximately 8 to 12 minute video and utilize existing and original footage, such as "From Cane Break to Sugar Bowl." The video will include the oral history as given by select members of the community as well as new current development footage. Use of the copyrighted historic footage is included in the contract. The project will also include extensive transfer of historic reel film to digital product and provision of the historical film, negatives and prints to the City.

Due to the timing of the Imperial project and other negotiations with involved parties on historic project issues, the funds for this project were rolled over into the 2007/2008 budget. A previously approved Letter of Agreement between the City of Sugar Land and Image Resources details copyright and usage issues between the City and Image Resources for the historic footage that the City will be receiving.

The Sugar Land 4B Corporation approved Funding Resolution No. 08-04-07 on April 24, 2008 funding \$60,000 of the contract, and the additional \$60,000 will be funded through HOT revenue budget. The contract will be completed by the end of the calendar year.

EXHIBITS

HISTORICAL DOCUMENTARY CONTRACT BETWEEN THE CITY OF SUGAR LAND AND IMAGE RESOURCES GROUP

This Contract (Contract) is made between the City of Sugar Land, Texas (City) and Image Resources Group (IMG). The City and IMG agree as follows:

A. Definitions. In this Contract:

Copyrighted Materials means the film entitled "From Cane Break to Sugar Bowl", the film entitled "Sugar Creek, A Development in Sugar Land", and video, photographs, negatives, prints, digital media of events, and other similar pictorial depictions relating to Sugar Land's history which IMG possesses and for which it owns a copyright on the effective date of this Contract.

Foundation means the Sugar Land Heritage Foundation (Foundation), a non-profit Texas Corporation created by the City to fulfill the City's obligations under this Contract.

Video means the historical documentary to be produced by IMG under this Contract for the City.

B. Video. IMG will produce the Video as described in Exhibit A. The Video, is a “work made for hire” as defined by federal copyright law (Title 17 of the United States Code). The City is considered the author and owner of the Video copyright. If the Video is ever determined not to be a “work made for hire”, by execution of this Contract, IMG assigns to the City its copyright ownership in the Video, but IMG may use the Video in its promotional materials.

C. City License to Use Copyrighted Materials.

(1) IMG grants to the City and the Foundation a non-exclusive license for the term of this Contract to use the Copyrighted Materials for the purpose of preservation, public display, education, format reproduction, and any commercial activity that produces revenues for those purposes. IMG will provide the City or Foundation with a copy of all the Copyrighted Materials when it transfers possession of the Copyrighted Materials to the City or Foundation.

(2) IMG will transfer possession of the Copyrighted Materials to the City or the Foundation when a facility is provided for the Copyrighted Materials that meets the standards for the preservation of historic film as established by a recognized authority. The transfer of the Copyrighted Material to the Foundation does not relieve the City of its obligations to take all reasonable and customary steps to preserve and protect the Copyrighted Materials.

D. IMG’s Video Documentary. Within 20 years of the effective date of this Contract, IMG may make a video documentary relating to the history of Sugar Land that showcases the City in a positive manner and makes use of portions of the Video if prior to making the documentary: (1) IMG gives the City a detailed written description of the content and message of the documentary; and (2) the City approves in writing the description of the documentary. IMG will provide the City with a prescreening of the documentary prior to public release. IMG will own the copyright in the documentary. IMG may request that the City participate in funding the documentary.

E. Payment and Funding. IMG will bill and the City will pay for work related to the Video at the intervals shown in Exhibit A and the City will pay the invoice within 30 days of receipt. A payment begins accruing interest on the date the payment becomes overdue. Interest on an overdue payment accrues interest at the rate in effect on September 1 of the fiscal year in which the payment becomes overdue. The rate in effect on September 1 is equal to the sum of (i) 1% and (ii) the prime rate as published in the Wall Street Journal on the first day of July of the preceding fiscal year that does not fall on a Saturday or Sunday. Interest on an overdue payment stops accruing on the date the City mails or electronically transmits the payment.

F. Term and Termination Provisions.

(1) Effective Date. This Contract is effective on the latest date of the dates signed by the parties.

(2) Termination. This Contract is for a term of 75 years.

(3) City Termination for Convenience. Under this paragraph, the City may terminate this Contract during its term at any time for the City’s own convenience where IMG is not in default by giving written notice to IMG. If the City terminates this Contract under this paragraph, the City will:

(a) Pay the IMG for all services rendered in accordance with this Contract to the date of termination; and

(b) Return to IMG any Copyrighted Materials previously provided to the City or the Foundation.

(4) Termination for Default. The City or IMG may terminate this Contract as provided in this paragraph if the other party fails to comply with its terms. The party alleging the default will give the other party notice of the default in writing citing the terms of the Contract that have been breached and what action the defaulting party must take to cure the default. If the party in default fails to cure the default as specified in the notice, the party giving the notice of default may terminate this Contract by written notice to the other party, specifying the date of termination. Termination of this Contract under this paragraph does not affect the right of either party to seek remedies for breach of the Contract as allowed by law, including any damages or costs suffered by either party.

G. Assignment. IMG shall not assign this Contract without the prior written consent of the City.

H. Law Governing and Venue. This Contract is governed by the law of the State of Texas and a lawsuit may only be prosecuted on this Contract in a court of competent jurisdiction located in or having jurisdiction in Fort Bend County, Texas.

I. Entire Contract. This Contract represents the entire Contract between the City and IMG and supersedes all prior negotiations, representations, or contracts, either written or oral. This Contract may be amended only by written instrument signed by all parties.

J. Independent Contractor. IMG will perform the work under this Contract as an independent contractor and not as an employee of the City. The City has no right to supervise, direct, or control IMG or its officers or employees in the means, methods, or details of the work to be performed by IMG under this Contract. .

K. Dispute Resolution Procedures. IMG and the City desire an expeditious means to resolve any disputes that may arise between them regarding this Contract. If a party disputes any matter relating to this Contract, the parties agree to try in good faith, before bringing any legal action, to settle the dispute by submitting the matter to mediation before a third party who will be selected by agreement of the parties. The City and IMG will each pay one-half of the mediator's fees.

L. Attorney's Fees. If a suit is filed for breach of contract or for any other cause relating to this Contract, the parties will not seek or be entitled to an award of attorney's fees or other costs relating to the suit.

M. Severability. If a court finds or rules that any part of this Contract is invalid or unlawful, the remainder of the Contract continues to be binding on the parties.

N. Insurance. IMG will procure and maintain the insurance described in Exhibit B.

CITY OF SUGAR LAND

IMAGE RESOURCES GROUP

Allen Bogard, City Manager

Rody Kuchar, President

Reviewed for Legal Compliance:

Attachments: Exhibit A: Project Description

Exhibit B: Insurance for Designated Professional Service Contracts [Form PU-111F-2 (3 pages)]

Exhibit A

CLIENT	The City of Sugar Land, Texas	
PROJECT	Historical Overview	
DESCRIPTION	<p>To capture and document both the history of Sugar Land and the stories of its people. The final product will be an approximately 8 to 12 minute video. The piece will utilize existing and original footage. The project will also document the oral history as given by selected members of the community.</p> <p>Sources for materials include historical films from Image Resources Group archives, existing interviews to be provided by the City of Sugar Land, existing footage from other Image Resources Group/City of Sugar Land projects, and original footage as required.</p>	
SERVICES / FEES	Pre-Production	- Including research, concept development, interviews, and script development.
	Production	- Including background footage, on camera interviews, still transfers, film transfers, and other image acquisition.
	Post-Production	- Including digital edit, graphics, voice over, music edit, final mix, and master.
DATE	January 1, 2008 through December 31, 2008	
AMOUNT	<p>\$120,000 to be paid as follows:</p> <p>\$30,000 to start the project or no later than May 1, 2008 or upon Council approval of agreement</p> <p>\$30,000 at approved concept and script, start of taping or no later than July 1, 2008</p> <p>\$30,000 at completion of taping and start of editing or no later than September 1, 2008</p> <p>\$30,000 at the project completion and no later than November 30, 2008 provided that project has been completed and accepted</p>	
TOTAL (w/o taxes)	\$120,000	

Exhibit B

CITY OF SUGAR LAND
FORM PU-111F-2

**REQUIRED INSURANCE PROVISIONS FOR DESIGNATED PROFESSIONAL
SERVICE CONTRACTS**

IMG shall comply with each and every condition contained herein. IMG shall provide and maintain, until the work covered in the contract is completed and accepted by The City of Sugar Land, the minimum insurance coverages as follows:

1. Commercial General Liability insurance at minimum combined single limits of \$1,000,000 per-occurrence and \$2,000,000 general aggregate for bodily injury and property damage, which coverage shall include products/completed operations (\$1,000,000 products/completed operations aggregate), and XCU (Explosion, Collapse, Underground) hazards. Coverage must be written on an occurrence form. Contractual Liability must be maintained covering the Contractors obligations contained in the contract.
2. Workers Compensation insurance at statutory limits, including Employers Liability coverage a minimum limits of \$500,000 each-occurrence each accident/\$500,000 by disease each-occurrence/\$500,000 by disease aggregate.
3. Commercial Automobile Liability insurance at minimum combined single limits of \$1,000,000 per-occurrence for bodily injury and property damage, including owned, non-owned, and hired car coverage.
4. Errors & Omissions coverage as follows:
 - a. Professional Liability with minimum limits of \$1,000,000.
 - b. This coverage must be maintained for at least two (2) years after the project is completed. If coverage is written on a claims-made basis, a policy retroactive date equivalent to the inception date of the contract (or earlier) must be maintained during the full term the contract.

PLEASE NOTE: The required limits may be satisfied by any combination of primary, excess, or umbrella liability insurances, provided the primary policy complies with the above requirements and the excess umbrella is following-form. IMG may maintain reasonable and customary deductibles, subject to approval by the City of Sugar Land.

Any Subcontractor(s) hired by IMG shall maintain insurance coverage equal to that required of the Contractor. It is the responsibility of IMG to assure compliance with this provision. The City of Sugar Land accepts no responsibility arising from the conduct, or lack of conduct, of the Subcontractor.

A Comprehensive General Liability insurance form may be used in lieu of a Commercial General Liability insurance form. In this event, coverage must be written on an occurrence basis, at limits of \$1,000,000 each-occurrence, combined single limit, and coverage must include a broad form Comprehensive General Liability Endorsement, products/completed operations, XCU hazards, and contractual liability.

With reference to the foregoing insurance requirement, IMG shall specifically endorse applicable insurance policies as follows:

1. The City of Sugar Land shall be named as an additional insured with respect to General Liability and Automobile Liability.
2. All liability policies shall contain no cross liability exclusions or insured versus insured restrictions.
3. A waiver of subrogation in favor of the City of Sugar Land shall be contained in the Workers Compensation, and all liability policies.
4. All insurance policies shall be endorsed to require the insurer to immediately notify the City of Sugar Land of any material change in the insurance coverage.
5. All insurance policies shall be endorsed to the effect that the City of Sugar Land will receive at least thirty (30) days' written notice prior to cancellation or non-renewal of the insurance.
6. All insurance policies, which name the City of Sugar Land as an additional insured, must be endorsed to read as primary coverage regardless of the application of other insurance.
7. Required limits may be satisfied by any combination of primary and umbrella liability insurances.
8. IMG may maintain reasonable and customary deductibles, subject to approval by the City of Sugar Land.
9. Insurance must be purchased from insurers having a minimum AmBest rating of A 7.

All insurance must be written on forms filed with and approved by the Texas Department of Insurance. Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent and shall contain provisions representing and warranting the following:

1. Sets forth all endorsements and insurance coverages according to requirements and instructions contained herein.
2. Shall specifically set forth the notice-of-cancellation or termination provisions to the City of Sugar Land.

Upon request, IMG shall provide the City of Sugar Land with an opportunity to inspect copies of all insurance policies associated with this contract.

A valid certificate of insurance verifying each of the coverages required above shall be issued directly to the City of Sugar Land within ten (10) business days after contract award by the successful contractor's insurance agent of record or insurance company. The certificate of insurance shall be sent to:

City of Sugar Land
Purchasing
P.O. Box 110
Sugar Land, TX 77487-0110

Reduction or Waiver of Insurance Requirements

The City may at any time reduce or waive all or part of the insurance requirements established by this document for any contractor that has entered into an agreement with the City to provide the services for which this insurance applies, if the City determines that the reduction or waiver will not unreasonably expose the City to a risk of liability or loss. An authorized City representative must authorize any reduction or waiver of these insurance requirements in writing before the reduction or waiver is effective.

CITY OF SUGAR LAND
FORM PU-111F-2

**REQUIRED INSURANCE PROVISIONS FOR DESIGNATED PROFESSIONAL
SERVICE CONTRACTS**

Insurance Broker

Name of Insured must match the

General Liability - Claims made or Modified Occurrence is not

Professional Liability coverage at the Limits shown must be provided.

This section must contain Additional Insured and Waiver of Subrogation endorsements as shown

ACORD CERTIFICATE OF LIABILITY INSURANCE					DATE (MM/DD/YY) 06/19/2002	
PRODUCER Agency Software, Inc. 11101 Airport Road Hayden, ID 83835 (800) 342-7327			THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.			
INSURED XYZ Engineering, Inc. 4321 Smith Houston, TX 77072 713-495-8798			INSURERS AFFORDING COVERAGE INSURER A: Selective Insurance Company INSURER B: Indemnity Insurance Company INSURER C: State Fund INSURER D: INSURER E:			
COVERAGES						
THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.						
INSR LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY CLAIMS MADE <input checked="" type="checkbox"/> OCCUR	123456789	06/19/02	06/19/03	EACH OCCURRENCE	\$ 1,000,000
					FIRE DAMAGE (Any one fire)	\$50,000
					MED EXP (Any one person)	\$5,000
B	GEN'L AGGREGATE LIMIT APPLIES PER: POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <input type="checkbox"/>	234565460	06/19/02	06/19/03	PERSONAL & ADV INJURY	\$1,000,000
					GENERAL AGGREGATE	\$2,000,000
					PRODUCTS - COMP/OP AGG	\$1,000,000
C	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO ALL OWNED AUTOS SCHEDULED AUTOS HIRED AUTOS NON-OWNED AUTOS	234565460	06/19/02	06/19/03	COMBINED SINGLE LIMIT (Ea accident)	\$1,000,000
					BODILY INJURY (Per person)	\$
					BODILY INJURY (Per accident)	\$
D	GARAGE LIABILITY ANY AUTO				PROPERTY DAMAGE (Per accident)	\$
					AUTO ONLY - EA ACCIDENT	\$
					OTHER THAN AUTO ONLY: EA ACC	\$
E	EXCESS LIABILITY OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/>				AGGREGATE	\$
						\$
						\$
F	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	WC5985614	06/19/02	06/19/03	<input checked="" type="checkbox"/> WC STATUTORY LIMITS	\$500,000
					E.L. EACH ACCIDENT	\$500,000
					E.L. DISEASE - EA EMPLOYEE	\$500,000
G	OTHER A Professional Liability	87456901 "Claims Made"	06/19/02	06/19/03	\$1,000,000 each claim	\$1,000,000 General Aggregate
DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS Certificate Holder is an additional insured. Waiver of Subrogation in favor of the Certificate Holder as required by written contract.						
CERTIFICATE HOLDER <input checked="" type="checkbox"/> ADDITIONAL INSURED; INSURER LETTER: <input checked="" type="checkbox"/>			CANCELLATION			
City of Sugar Land P. O. Box 110 Sugar Land, TX 77487-0110 Attn: Finance / Purchasing			SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ADVISE BY MAIL <u>30</u> DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE: <i>John Higgins</i>			
ACORD 25-S (7/97)			© ACORD CORPORATION 1988			

Minimum acceptable AmBest

The GL Each Occurrence and General Aggregate Limits must be at least as shown at left

The AL Combined Single Limit must

The totals in each box must be at least as shown and the WC Statutory Limits box must be checked

Certificate Holder must be City of Sugar Land with proper address

Signed by the insurance company, insurance agent, or insurance broker only.

A minimum of 30 days written notice of cancellation or non-renewal must be provided.